

LEWIS BISSELL.

FEBRUARY 29, 1840.

Laid on the table.

Mr. RUSSELL, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to whom was referred the petition of Lewis Bissell, report:*

That this claim has heretofore been presented to Congress, and in the House of Representatives was, at the second session of the 24th Congress, referred to the Committee of Claims, which made a detailed report thereon adverse to the claim.

At the second session of the 25th Congress the claim was again presented in the House of Representatives, and referred to the Committee of Claims, which, on the 17th of May, 1838, made an unfavorable report thereon. The formal objections then taken have been in some degree overcome, by proofs subsequently referred; but the merits of the claim, as formerly presented, are in no way changed. The claim is for timber felled on the margin of the Mississippi river, where the Government was engaged in making extensive improvements in the navigation of that stream; and no timber was felled but such as, in the estimation of the gentleman superintending that improvement, was necessary to be removed to prevent future obstructions. It does not appear that any contemporaneous estimates of the quantity of timber felled from the margin of the river, and the value per cord, or otherwise, were made at the instance of the petitioner; nor do any appear to have been made from actual knowledge derived from observations of the then existing state of things, by his procurement. It cannot be denied that the quantity and value could then have been ascertained with much greater certainty than at the remote period of several years from the time when the occurrence took place; and it is believed that few cases can exist which will more strongly illustrate the propriety of early vigilance on the part of claimants than the one under consideration, with a view to accurate results. The timber in question was felled on the 29th day of September, 1832, and no effort was made to ascertain the quantity or value thereof, by the petitioner, until several years afterwards; and the means then resorted to for that purpose could not have been very satisfactory, even to those making the estimates: these estimates must have been the result of conclusions drawn from representations made to them, rather than from facts within their own knowledge. The claimant's witnesses estimate his damages at from \$400 to \$700, and that without reference to the value of the land on which the timber grew.

When this case was first presented and urged upon the consideration of Congress, information was sought from the officer under whose immediate direction the timber was felled, and who took an accurate account of the number of trees cut, the reasons for felling them, and their value, estimated at the time. He kept what he calls a log-book, in which were noted his daily operations, and "distinguishing; (he says in his affidavit submitted to the committee,) from day to day, the particular work done, and the number of each description of obstructions removed, to wit: snags, taken from the bed of the Mississippi river; and trees, felled from its caving-in banks, and the points where the same were located: that, on the 24th September, 1832, he caused to be felled, on the land in question, (about four miles above St. Louis,) one hundred and thirty-six trees, of cotton-wood timber; all which, he thinks, would soon have fallen into the river, and formed snags dangerous to the navigation, if they had not been felled: that the trees would not have produced more than one and a half cord of wood each, and that it could not have been worth more than fifty cents per cord: *that all the land from which this timber was felled has since caved in; and, in his opinion, would have fallen in much sooner if the timber had not been felled:* that the witness had been engaged in improving the navigation of that river two seasons, and had done so for a distance of nine hundred miles and upwards, and had felled timber similarly situated at various points, the whole extent; and no one objected to the operation, for the reason that the timber would soon have fallen into the river if it had not been cut away.

Thus it will be seen that, upon this estimate, made by the individual possessing the best means of knowledge, and contemporaneously made, the damages which the Government could have been subjected to would not have exceeded \$102. But the committee apprehend that, even for that sum, there is no foundation for the claim. The benefits which the owners of the land bordering on this river derived from the improvement of the navigation must have counterbalanced any damages which were occasioned by the precautionary measures used to prevent future obstructions. It was for the benefit of all that timber situated like that in question should have been removed; and though the committee will not now decide that a case could not be made which would justly subject the Government to remuneration for damages to an individual who has been injured by the improvement, yet, in their opinion, this is not such a case; and they therefore offer for the consideration of the House the following resolution:

**Resolved,** That the prayer of the petitioner ought not to be granted.